राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 18 जनवरी, 2018 / 28 पौष, 1939

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated: the 11th *September,* 2017

No: Shram (A) 6-2/2014 (Awards) D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	563/16	Bhag Singh	E.E. HPPWD, Dharampur & others	20-07-2017
2.	567/16	Kali Dass	E.E. HPPWD, Dharampur & others	20-07-2017
3.	568/16	Bimla Devi	E.E. HPPWD, Dharampur & others	20-07-2017
4.	622/16	Amar Chand	E.E. HPPWD, Dharampur & others	20-07-2017
5.	608/16	Panjku Ram	En-in-Chief & others	20-07-2017
6.	610/16	Malka Devi	En-in-Chief & others	20-07-2017
7.	611/16	Veena Devi	En-in-Chief & others	20-07-2017
8.	612/16	Rajinder Kumar	En-in-Chief & others	20-07-2017
9.	613/16	Jamuna Devi	En-in-Chief & others	20-07-2017
10.	605/16	Badamu Devi	En-in-Chief & others	20-07-2017
11.	668/16	Amriti Devi	En-in-Chief & others	20-07-2017
12	211/16	Leela Devi	E.E., HPPWD, Dharampur	27-07-2017
13.	602/15	Satyawar	E.E., HPPWD, Killar	28-07-2017
14.	08/16	Bargat Raj	E.E., HPPWD, Killar	28-07-2017
15.	13/16	Ajeet Kumar	E.E., HPPWD, Killar	28-07-2017
16.	15/16	Sher Singh	E.E., HPPWD, Killar	28-07-2017
17.	67/16	Jagdish Kumar	E.E., HPPWD, Killar	28-07-2017
18.	68/16	Prem Raj	E.E., HPPWD, Killar	28-07-2017
19.	510/15	Bhag Singh	E.E., HPPWD, Killar	28-07-2017
20.	493/15	Dev Raj	E.E., HPPWD, Killar	28-07-2017
21.	495/15	Chaman Singh	E.E., HPPWD, Killar	28-07-2017

22.	497/15	Devki	E.E., HPPWD, Killar	28-07-2017
23.	488/15	Shakuntla	E.E., HPPWD, Killar	28-07-2017
24.	512/15	Laxmi Devi	E.E., HPPWD, Killar	28-07-2017
25.	491/15	Rajinder Singh	E.E., HPPWD, Killar	28-07-2017
26.	500/15	Dev Raj	E.E., HPPWD, Killar	28-07-2017
27.	128/16	Guddi	E.E., I&PH/HPPWD, Killar	31-07-2017

By order,
Sd/-
R. D. DHIMAN, IAS,
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 563/2016

Date of Institution : 24.08.2016

Date of Decision : 20.07.2017

Shri Bhag Singh s/o Shri Saktiya Ram, r/o Village & P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Engineer-in-Chief, HPPWD, US Club, Shimla

2. The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Sh. Bhag Singh S/o Sh. Saktiya Ram Village & P.O. Dhawali, Tehsil, Sarkaghat, Distt. Mandi, H.P. during 11/2001. by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD,-Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 9/1998 to 11/2001, only for 1004 days, and has raised his industrial dispute vide demand notice dated 2.3.2015 after 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers & management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* September, 1998 where he continued to work upto November, 2005 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order w.e.f. November, 2005 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 4.3.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government *i.e.* Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon"ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2005 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply *inter-alia* taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 9/1998 who intermittently worked upto 11/2001. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not

violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents during 11/2001 and raised his industrial dispute *vide* demand notice dated 4.3.2015 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order *w.e.f.* November, 2001 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of September, 1998 on muster roll basis as beldar who continued to work till November, 2001 when his services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 115 days in the year 1998, 263 days in 1999, 303 days in 2000 and 323 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2001, petitioner has factually worked for 303 days in 2000 and 323 days in 2001 aggregating to 626 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since September, 1998 till November, 2001 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since September, 1998 till November, 2001 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 2001. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any

other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after November, 2001 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 4.3.2015 after about fourteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning moreso when he himself admitted in cross-examination that he had cultivable land and also earned by working as labourer. It is maintained if, he did not get any government job however petitioner has revealed in cross-examination that he had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.,** in which compensation of Rs.5 lakh was awarded. In another judgment of Hon"ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and**

another vs. Geetam Singh reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on November, 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co- operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other

paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **four years** who was non-skilled worker ageing 55 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 1004 days in four years when he had already completed 240 days entitling him protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of nine years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not

maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 567/2016

Date of Institution : 24.08.2016

Date of Decision : 20.07.2017

Shri Kali Dass s/o Shri Hari Singh, r/o Village Dedhal, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.

2. The Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Sh. Kali Dass S/o Sh. Hari Singh Vill. Dedhal, PO Sidhpur, Tehsil Sarkaghat, Distt. Mandi, H.P. during 11/2005 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD,-Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 5/1998 to 11/2005 only for 2641 days, and has raised his industrial dispute *vide* demand notice dated 19.12.2014 after 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. May, 1998 where he continued to work upto November, 2005 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order w.e.f. November, 2005 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 19.12.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2005 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent

to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 5/1998 who intermittently worked upto 11/2005. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents during 11/2005 and raised his industrial dispute *vide* demand notice dated 19.12.2014 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.1,50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order *w.e.f.* November, 2005 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of May, 1998 on muster roll basis as beldar who continued to work till November, 2005 when his services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 186 days in the year 1998, 348 days in 1999, 357 days in 2000, 348 days in 2001, 363 days in 2002, 360 days in 2003, 364 days in 2004 and 315 days in 2005. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2005, petitioner has factually worked for 364 days in 2004 and 315 days in 2005 aggregating to 679 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since May, 1998 till November, 2005 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since May, 1998 till November, 2005 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were

allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 2005. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after November, 2005 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 19.12.2014 after about nine years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning moreso when he himself admitted in cross-examination that he had cultivable land and also earned by working as labourer. It is maintained if, he did not get any government job however petitioner has revealed in cross-examination that he had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.,** in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon"ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on November, 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co- operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid

judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon"ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **eight years** who was non-skilled worker ageing 52 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 2641 days in eight years when he had already completed 240 days entitling him protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of nine years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.1,50,000/- (Rupees one lakh fifty

thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K .K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 568/2016

Date of Institution : 24.08.2016

Date of Decision : 20.07.2017

Smt. Bimla Devi w/o Shri Narain Singh, r/o Village Strehar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

2. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.

3. The Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Smt. Bimla Devi W/o Sh. Narain Singh Vill. Strehar, PO Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. during 9/1999. by (1) The Engineer-in-Chief HPPWD, Nirman Bhavan, Shimla-2, (2) the Executive Engineer, HPPWD, - Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 11/1998 to 9/1999, only for 285.5 days and has raised her industrial dispute vide demand notice dated 29.5.2015 after more than 16 years allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 11/1998 where she continued to work upto 9/1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order w.e.f. 9/1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 21.2.2015 copy of the same was

forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents during 09/1999 and raised her industrial dispute vide demand notice dated 29.5.2015 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* 9/1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 47 ½ days in the year 1998 and 238 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in 1999, petitioner has factually worked for 47 ½ days in 1998 and 238 days in 1999 aggregating to 285 ½ days prior to termination. A bare

glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since November, 1998 till September, 1999 immediately prior to her retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since November, 1998 till September, 1999 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice *i.e.* 29.5.2015 after about sixteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and**

another does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.,** in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the

industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co- operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon"ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 48 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 285 ½ days in two years when she had already completed 240 days entitling her protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 622/2016

Date of Institution : 01.09.2016

Date of Decision : 20.07.2017

Shri Amar Chand s/o Shri Ram Singh, r/o Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Amar Chand S/O Shri Ram Singh, R/O Village Banehardi, P.O. Pehad, Tehsil Sarkaghat, District Mandi, H.P. during year 2000 by the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P., who had worked on daily wages and has raised his industrial dispute after more than 12 years vide demand notice dated 28.01.2013, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 12 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. June, 1999 where he continued to work upto 2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order in the year 2000 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25- F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma

Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 28.1.2013 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been no filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner in the year 2000 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 7/1999 who intermittently worked upto 12/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents during year, 2000 and raised his industrial dispute vide demand notice dated 28.1.2013 is/was illegal and unjustified as alleged? . . *OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in the year 2000 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of June, 1999 on muster roll basis as beldar who continued to work till 2000 when his services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999),

Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 147 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2000, petitioner has factually worked for 147 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since June, 1999 till December, 1999 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had not worked for more than 240 days ever since June, 1999 till December, 1999 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

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petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 28.1.2013 after about twelve years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning moreso when he himself admitted in cross-examination that he had cultivable land and also earned by working as labourer. It is maintained if, he did not get any government job however petitioner has revealed in cross-examination that he had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

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18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble**

High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is

uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 50 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 147 days in a year irrespective of fact that demand notice was issued after a period of nine years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 608/2016

Date of Institution : 26.08.2016

Date of Decision : 20.07.2017

Shri Panjku Ram s/o Shri Bhagat Ram, r/o Village Tayog, P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

2. The Engineer-in-Chief, HPPWD, US Club, Shimla-1

2. The Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Shri Panjku Ram S/O Shri Bhagat Ram, R/O Village Tayog P.O. Sidhpur, Tehsil Sarkaghat, District Mandi, H.P. during 02/2004 by the Engineer-in-Chief, HPPWD, Us Club, Shimla-1, & the Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 19/12/2014 after more than 10 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 50, 303.5, 252.5, 270, 264 and 35 days during years 1999, 2000, 2001, 2002, 2003 and 2004 respectively and delay of more than 10 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar in the year 1999 where he continued to work upto February, 2004 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the

respondent vide verbal order w.e.f. February, 2004 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 19.12.2014 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 2004 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1999 who intermittently worked upto 02/2004. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E, copy of notice dated 23.1.2004 Ex. PW1/F and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents during 02/2004 and raised his industrial dispute *vide* demand notice dated 19.12.2014 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.90,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order *w.e.f.* February, 2004 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the year 1999 on muster roll basis as beldar who continued to work till February, 2004 when his services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 50 days in the year 1999, 303 ½ days in 2000, 252 ½ days in 2001, 270 days in 2002, 264 days in 2003 and 35 days in 2004. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2004, petitioner has factually worked for 264 days in 2003 and 35 days in 2004 aggregating to 299 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1999 till February, 2004 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since 1999 till February, 2004 immediately prior to his retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after February, 2004. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. But after close scrutiny of Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly senior to petitioner who were joined in service with the department before the joining of petitioner. That being so the respondent had not violated the provisions of Section 25-G of the Act

15. Ld. counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after February, 2004 be treated as regular period. It is not understood as to how petitioner could claim such

benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 19.12.2014 after about ten years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning moreso when he himself admitted in cross-examination that he had cultivable land and also earned by working as labourer. It is maintained if, he did not get any government job however petitioner has revealed in cross-examination that he had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-F of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.,** in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on February, 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903**

Hon'ble High Court of H.P. (Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co- operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides

being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **six years** who was non-skilled worker ageing 58 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 1175 days in six years when he had already completed 240 days entitling him protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of nine years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.90,000/- (Rupees ninety thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.90,000/- (Rupees ninety thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 610/2016

Date of Institution : 26.08.2016

Date of Decision : 20.07.2017

Smt. Malka Devi w/o Shri Om Prakash, r/o Village Richali, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, US Club, Shimla.
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.

. .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Smt. Malka Devi W/o Sh. Om Prakash Vill. Richali P.O. Dhawali, Tehsil Sarkaghat, Distt. Mandi, H.P. from 6/2000, by (1) the Engineer- in-Chief HPPWD, Nirman Bhawan, Shimla- (2) Executive Engineer, HPPWD,- Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 01/1999 to 6/2000, only for 434.5 days, and has raised her industrial dispute vide demand notice dated 4.5.2015 after 15 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 1/1999 where she continued to work upto 6/2000 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order w.e.f. 6/2000 without notice pay as well as retrenchment compensation under

the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 21.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 1/1999 who intermittently worked upto 6/2000. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents from 6/2000 and raised her industrial dispute vide demand notice dated 4.5.2015 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.60,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order w.e.f. 6/2000 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of January, 1999 on muster roll basis as beldar who continued to work till June, 2000 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 310 ½ days in the year 1999 and 124 days in 2000. Even if we look at the mandays chart, this would show that immediately preceding her termination in 2000, petitioner has factually worked for 310 ½ days in 1999 and 124 days in 2000 aggregating to 434 ½ days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since January, 1999 till June, 2000 immediately prior to her retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since January, 1999 till June, 2000 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 2000. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after June, 2000 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter

respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after June, 2000 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 4.5.2015 after about fifteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.,** in which compensation of Rs. 5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on June, 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or

compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 43 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 434 ½ days in two years when she had already completed 240 days entitling her protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of fifteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.60,000/- (Rupees sixty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 611/2016

Date of Institution : 26.08.2016

Date of Decision : 20.07.2017

Smt. Veena Devi w/o Shri Sita Ram, r/o Village Strehar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhavan, Shimla.

2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Smt. Veena Devi W/o Sh. Sita Ram Vill. Strehar, PO Dharampur, Tehsil Sarkaghat, District Mandi, H.P. during 9/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla02, (2) the Executive Engineer, HPPWD,-Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 11/1998 to 9/1999, only for 202.5 days and has raised her industrial dispute vide demand notice dated 29.5.2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar w.e.f. 11/1998 where she continued to work upto 9/1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order w.e.f. 9/1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 21.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents during 09/1999 and raised her industrial dispute vide demand notice dated 29.5.2015 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order w.e.f. 9/1999 qua her

illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 49 days in the year 1998 and 153 ½ days in 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in 1999, petitioner has factually worked for 49 days in 1998 and 153 ½ days in 1999 aggregating to 202 ½ days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since November, 1998 till September, 1999 immediately prior to her retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had not worked for more than 240 days ever since November, 1998 till September, 1999 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of

workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 29.5.2015 after about sixteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.,** in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab &

Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co- operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries**

Ltd. v. State of Rajasthan in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 48 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 202 ½ days in two years irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 612/2016

Date of Institution : 26.08.2016

Date of Decision : 20.07.2017

Shri Rajinder Kumar s/o Shri Duni Chand, r/o Village Banehardi, P.O. Hyun Pehad, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.

2. Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Sh. Rajinder kumar S/o Sh. Duni Chand Vill. Banehadi, PO Hyun Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. from 1/2000 by (1) the Engineer- in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer,

HPPWD,- Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 11/1999 to 12/1999, only for 56 days, and has raised his industrial dispute *vide* demand notice dated 13.4.2015 after 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* November, 1999 where he continued to work upto December, 1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order in the year 2000 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 13.4.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner in the year 2000 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1999 who intermittently worked upto 12/1999. It is alleged that petitioner has abandoned the job of his own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of his own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at his own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of his own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner

by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised his claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents from 01/2000 and raised his industrial dispute *vide* demand notice dated 13.4.2015 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which he has prayed for setting aside the retrenchment order in month of January, 2000 qua his illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that his case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1999 on muster roll basis as beldar who continued to work till December, 1999 when his services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 56 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding his termination in 2000, petitioner has factually worked for 56 days in 1999 prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since November, 1999 till December, 1999 immediately prior to his retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had not worked for more than 240 days ever since November, 1999 till December, 1999 immediately prior to his retrenchment as stated above.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after January, 2000. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment. In view of foregoing, it is held that petitioner has failed to prove his claim for under Section 25-F of the Industrial Disputes Act. As far as violation of Section 25-H is concerned, Pardeep Kumar, Sunita Devi & Chanchla Devi are shown to have been appointed in 2008, 2009 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no.(2) of the affidavit Ex. PW1/A were engaged, petitioner was factually not given offer for reemployment which manifestly violates mandate of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner he was available for job who was not appointed however some persons who joined later were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

14. In so far as violation of Section 25-G of the Act is concerned, the principle of "Last come First go" was not followed by the respondent in this case. It would be relevant to refer to mandays chart Ex. PW1/C as well as seniority list Ex. PW1/D of Shashi Kant. The claim of petitioner remains that said Shashi Kant had joined in the year 2000 and was junior to him in service and after petitioner's illegal termination from service before engaging Shashi Kant, petitioner was not afforded any opportunity of being given reemployment. Ld. Dy. D.A. for the State has not disputed seniority list of daily waged beldar Ex. PW1/D which shows that Shashi Kant had joined in the year 1999 and thus continues to be senior to him in service who figured at serial no.646 of seniority list Ex. PW1/D. Ex. RW1/B mandays chart relating to the petitioner reveals that he had joined in November, 1999. Thus, a controversy has arisen if Shashi Kant factually joined earlier to him or later than him. Be it noticed that respondent had not led any document to controvert the facts contains in Ex. PW1/C. Mandays chart of Shashi Kant clearly shows that he had joined in January, 2000. It is admittedly not the case of the respondents that the document Ex. PW1/C in incomplete document rather it strengthening the plea of petitioner in which the petitioner has claimed to have been appointed earlier to said Shashi Kant. Thus, when no evidence has been led by the respondent except the seniority list referred to above and that RW1 has not disputed correctness of the contents of Ex. PW1/C relating to Shashi Kant. As such, the controversy qua joining of different dates of said Shashi Kant as stated above has to be interpreted in favour of the petitioner by holding that said Shashi Kant had joined in the year 2000 and after termination of services of petitioner in December, 1999, he was never offered any opportunity of reemployment which clearly shows that the respondent had violated the mandate of provisions of Section 25-G of the Act. As such, it is held that while retrenching the services of petitioner and engaging services of said Shashi Kant, respondents had clearly violated the provisions of Section 25-G of the Act. On this score petitioner is entitled for relief as sought for.

15. Ld. counsel/AR for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after 2000 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after his termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after his termination, although petitioner had issued demand notice i.e. 13.4.2015 after about twelve years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after his termination but there is nothing authenticated in evidence suggesting that he remained without earning moreso when he himself admitted in cross-examination that he had cultivable land and also earned by working as labourer. It is maintained if, he did not get any government job however petitioner has revealed in cross-examination that he had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

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No.2, Jaipur and Anr. in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon"ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-**cum**-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment

in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **one year** who was non-skilled worker ageing 35 years when his services were illegally terminated who is not likely to get government job at this age and had factually worked for 56 days in a year irrespective of fact that demand notice was issued after a period of fifteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not

maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 613/2016

Date of Institution : 26.08.2016

Date of Decision : 20.07.2017

Smt. Jamuna Devi w/o Shri Bidhi Chand, r/o Village Strehar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhavan, Shimla.

2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.
. .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Smt. Jamuna Devi W/o Sh. Bidhi Chand Vill. Strehar, PO Dharampur, Tehsil, Sarkaghat, Distt. Mandi, H.P. during 9/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD, -Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 11/1998 to 12/1998 & 1/1999 to 9/1999 only for 210.5 days, and has raised her industrial dispute vide demand notice dated 15.6.2015 after more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 11/1998 where she continued to work upto 9/1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order w.e.f. 9/1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 21.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent

to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents during 09/1999 and raised her industrial dispute vide demand notice dated 29.5.2015 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* 9/1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 49 days in the year 1998 and 161 ½ days in 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in 1999, petitioner has factually worked for 49 days in 1998 and 161 ½ days in 1999 aggregating to 210 ½ days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had not worked for more than 240 days ever since November, 1998 till September, 1999 immediately prior to her retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had not worked for more than 240 days ever since November, 1998 till September, 1999 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 15.6.2015 after about sixteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of

Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.,** in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co- operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized

Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co-extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 46 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 210 ½ days in two years irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,KANGRA AT DHARAMSHALA (HP)

Ref No. : 605/2016

Date of Institution : 26.08.2016

Date of Decision : 20.07.2017

Smt. Badamu Devi w/o Shri Sohan Singh, r/o Village Strehar, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhavan, Shimla.
2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.

. .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether alleged termination of services of Smt. Badamu Devi W/o Sh. Sohan Singh Vill. Strehar, PO Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. during 9/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2, (2) the Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during the 11/1998 to 9/1999, only for 291 days, and has raised her industrial dispute vide demand notice dated 16.3.2015 after 15 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* 11/1998 where she continued to work upto 9/1999 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order w.e.f. 9/1999 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on 1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 21.2.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour

Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 11/1998 who intermittently worked upto 9/1999. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 21.01.2017 for determination:

1. Whether termination of services of the claimant/petitioner by the respondents during 09/1999 and raised her industrial dispute vide demand notice dated 16.3.2015 is/was illegal and unjustified as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

3. Whether the claim petition is not maintainable in the present form? . .*OPR.*

4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* 9/1999 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of November, 1998 on muster roll basis as beldar who continued to work till September, 1999 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 47 days in the year 1998 and 244 days in 1999. Even if we look at the mandays chart, this would show that immediately preceding her termination in 1999, petitioner has factually worked for 47 days in 1998 and 244 days in 1999 aggregating to 291 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since November, 1998 till September, 1999 immediately prior to her retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since November, 1998 till September, 1999 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been

appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after September, 1999 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 16.3.2015 after about sixteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment

compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon"ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.,** in which compensation of Rs.5 lakh was awarded. In another judgment of Hon'ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on September, 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **two years** who was non-skilled worker ageing 52 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 291 days in two years when she had already completed 240 days entitling her protection envisaged under Section 25-F

of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of sixteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 668/2016

Date of Institution : 17.09.2016

Date of Decision : 20.07.2017

Smt. Amriti Devi w/o Shri Ravi Kumar, r/o V.P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. . . *Petitioner.*

Versus

1. The Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla.

2. The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.
. .*Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether alleged termination of services of Smt. Amriti Devi W/O Shri Ravi Kumar, R/O V.P.O. Longni, Tehsil Sarkaghat, District Mandi, H.P. during 10/2001 by (i) the Engineer-in- Chief HPPWD, Nirman Bhawan, Shimla (ii) the Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P. who has worked as beldar on daily wages basis and has raised her industrial dispute vide demand notice dated 04/05/2015 after more than 14 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 288, 356 and 256 days during years 199, 2000 and 2001 and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition revealed that petitioner had been engaged by respondent on daily waged basis on muster roll as beldar *w.e.f.* March, 1999 where she continued to work upto October, 2001 who had completed 240 days. Averments made in the claim petition further revealed that services of the petitioner had been terminated by the respondent vide verbal order *w.e.f.* November, 2001 without notice pay as well as retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). It is alleged that respondent had violated the provisions of Section 25-F of the Act. Not only this, the principle of "Last come First go" was not followed by the respondent as some juniors namely S/Sh. Shasi Pal (6.4.1999), Mamta Devi (6.4.2000), Roshani Devi (4.7.1999) and Inder Singh (1.1.2000) were retained in service whereas the service of petitioner had been terminated. The grievance of petitioner further remains that after termination of services of petitioner so many new hands had been engaged by the respondent/department, whose names were Pradeep Kumar on 02.05.2008, Vipin Kumar on

1.7.2008, Lekh Raj on 25.8.2008 and Ruma Devi on 25.5.2014 but petitioner had not been given any opportunity of reemployment by the respondent prior to appointing above named workers establishing violation of provisions of Section 25-H of the Act. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 4.5.2015 copy of the same was forwarded to Labour Officer, Mandi for further necessary action. It is alleged that Labour Officer, Mandi could not resolve the dispute who submitted failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 directing the Labour Commissioner Shimla to make reference to the Labour Court. The dispute stated to have been not filed on account of delay and moreover Hon'ble High Court of H.P. has condoned the delay of eight years in case of **Rajneet Singh vs. State of H.P. & Ors.** reported in **2015 (145) FLR 722.** The petitioner alleges that respondent in terminating the services of petitioner w.e.f. 1999 without compliance with mandatory provision of Industrial Disputes Act was illegal and unjustified. Accordingly, prayer has been made to set aside the illegal termination order of petitioner directing the respondent to reinstate the petitioner with full back wages, seniority and continuity in service with all consequential benefits.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits admitted that petitioner was engaged as daily wager on 3/1999 who intermittently worked upto 10/2001. It is alleged that petitioner has abandoned the job of her own who had not completed 240 days in each calendar year. It is alleged that petitioner had left the job of her own sweet will and respondent/department had not violated any provisions of the Industrial Disputes Act. The plea of respondent further remained that petitioner had left the job at her own sweet will. Moreover there exist inordinate delay in raising industrial dispute. It is alleged that petitioner had left the job of her own sweet will who was never terminated by the respondent. It is alleges that question of termination of the services of petitioner by the respondent does not arise. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner was gainfully employed as an agriculturist after leaving the job. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC Ex. PW1/A, Ex. PW1/B copy of RTI information dated 13.11.2013, Ex. PW1/C copy of mandays chart of Sh. Shashi Kant, copy of seniority list Ex. PW1/D, copy of letter dated 18.3.2015 Ex. PW1/E and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Kashyap, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B and closed the evidence.

7. I have heard the ld. Authorized Representative/counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 27.02.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 04.5.2015 qua her termination of service during October, 2001 by respondents suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of petitioner by the respondent during October, 2001 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is pertinent to mention here that claim petition before this Court was filed by petitioner in which she has prayed for setting aside the retrenchment order *w.e.f.* October, 2001 qua her illegal termination and sought direction to the effect that services of petitioner be treated as continuous service till date with full back wages. It has further been prayed that services of petitioner be regularized after completion of eight years of service on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that petitioner was appointed as daily wage basis with the respondent in the month of March, 1999 on muster roll basis as beldar who continued to work till October, 2001 when her services were terminated in violation of Section 25-F of the Act as it is unclear from evidence if compensation under Section 25-F was factually received by petitioner. While retrenching the services of petitioner principle of "Last come First go" was not followed as Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Hans Raj (6.4.2000) were retained in service and thus the provisions of Section 25-G of the Act was not followed by the

respondent. Mandays chart Ex. RW1/B on record reveals that petitioner had worked for 288 days in the year 1999, 356 days in 2000 and 256 days in 2001. Even if we look at the mandays chart, this would show that immediately preceding her termination in 2001, petitioner has factually worked for 356 days in 2000 and 256 days in 2001 aggregating to 612 days prior to termination. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since March, 1999 till October, 2001 immediately prior to her retrenchment as stated above. A bare glance at the mandays chart Ex. RW1/B would reveal petitioner had worked for more than 240 days ever since March, 1999 till October, 2001 immediately prior to her retrenchment as stated above. Be it noticed that Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that when persons mentioned in para no. 2 of the affidavit Ex. PW1/A were engaged petitioner was factually not given offer for reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that after termination of petitioner she was available for job who was not appointed however some persons fresh were allowed to join in service. As such, action of respondent in doing so clearly violates Section 25-H of the Industrial Disputes Act.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty, respondent had issued any notice or letter. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2001. No reason whatsoever has been assigned for such an action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/D is the seniority list of daily wages beldar in respect of Dharampur Division who had completed eight years of as on 31.3.2008 and some of them were junior to the petitioner and had joined after termination of the services of petitioner. Some of these co-workers shown in Ex. PW1/D the seniority list details of workers of Division HPPWD Dharampur were certainly junior to petitioner figured at serial nos. 646 and 652 respectively who were given sufficient work existing in those years more than 240 days in a year whereas the petitioner had been not given muster roll for the whole month. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act.

15. Ld. counsel for the petitioner has contended with vehemence that petitioner be treated in continuous service for eight years and for said reason the left period after October, 2001 be treated as regular period. It is not understood as to how petitioner could claim such benefit as petitioner never worked with the respondent/department after her termination as

well as there is no adequate evidence on record suggesting that petitioner had represented the respondent/department after her termination, although petitioner had issued demand notice i.e. 4.5.2015 after about fourteen years and thus judgment of Hon'ble Apex Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Therefore, the entire period cannot be treated in service. As stated above that petitioner remained out of job after her termination but there is nothing authenticated in evidence suggesting that she remained without earning moreso when she herself admitted in cross-examination that she had cultivable land and also earned by working as labourer. It is maintained if, she did not get any government job however petitioner has revealed in cross-examination that she had not been given notice as well as retrenchment compensation as required to be paid. In view of foregoing discussions, respondent is held to have violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

16. Ld. Authorized Representative/counsel for petitioner has placed reliance of judgment of Hon'ble Apex Court reported in **2016 (151) FLR 1039** titled as **Rashtriya Colliery Mazdoor Sangh and Employers in Relation to Management of Kenduahih Colliery of M/S BCCL and Ors.**, in which Hon'ble Apex Court has awarded compensation of Rs.4 lakh to each workman. Similarly, reliance has placed on judgment of Hon'ble High Court of Punjab & Haryana reported in **2014 LLR 967** titled as **Deshsewak Foundry vs. Presiding Officer, Labour Court, Gurdaspur & Ors.,** in which compensation of Rs.5 lakh was awarded. In another judgment of Hon"ble High Court of Rajasthan, Jaipur Bench reported in **2017 (152) FLR 206**, titled as **Youth Co-ordinator, Nehru Yuva Kendra and Labour Court No.2, Jaipur and Anr.** in which compensation of Rs.2 lakh was granted to the workman who had merely worked for two years. Thus, above said judgments disclosing awarding larger amount of compensation which the claimant/petitioner has prayed for. Ld. Dy. D.A. for State has relied upon judgment of **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC),** in which various criteria to be looked by Labour Court in awarding compensation. It has been held that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute and in this judgment Hon'ble Apex Court had awarded compensation of Rs.1,00,000/- only in lieu of reinstatement and consequential benefits to a retrenched employee who had issued demand notice after about six years.

17. Since no straight-jacket formula can be applied for determining compensation as it is to be awarded on the basis of facts of case. In **2014 LLR 967** Hon'ble High Court of Punjab & Haryana had awarded compensation of Rs.5 lac to claimant petitioner who was litigating for past 30 years. Similarly, in **2016 (151) FLR 1039** Hon'ble Apex Court awarded compensation to each worker of Rs.4 lacs. It was observed that many of the workmen were at age of retirement and that nearly 27 years had elapsed since the time of retrenchment. Moreover, the workers who were awarded compensation of Rs.4 lac belonged to skilled category of Tyndals. As such, judgment relied upon by ld. counsel/Authorized Representative for petitioner does not apply to present case rather applying the criteria laid down by Hon'ble Apex Court in **Geetam Singh's** case **2013 (136) FLR 893 (SC)** has to be followed and applied.

18. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on October, 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising

dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

19. Ld. Dy. D.A. has representing State/respondents has vehemently contended that claimant/petitioner is not entitled for any relief either by way of reinstatement or compensation in view of judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** Relying upon the aforesaid judgment, it has been contended that while making reference to the Labour Court by the Government, the competent authority has to see that there is existence of an industrial dispute or apprehension of an industrial dispute and if there is no live dispute or if dispute was no longer existing reference could not be made at belated stage. On the other hand, ld. Authorized Representative for the petitioner has contended that the judgment of Hon'ble Apex Court referred to above does not come to the rescue to the respondents moreso when government itself made reference and has not challenged the correctness of reference before the Hon'ble High Court. I have carefully gone through the judgment referred to above and of the view that the contention of the ld. Dy. D.A. is fallacious. It would be relevant to refer to para 7 of the judgment in which the Hon'ble Apex Court has categorically held that the issue which fell for determination is whether reference of such a belated claim was appropriate. It was further observed that order of reference cannot be made mechanically without forming an opinion as referred to in the other paragraphs of the judgment and order of making reference is open to judicial review if it is shown that the appropriate government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. In paragraph 23 Sub para (8) of the judgment of Hon'ble Apex Court in which it has been specially observed that the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. It was submitted before the Hon'ble Apex Court that once a reference has been made under Section 10 of the Industrial Disputes Act, Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court which was found be not correct proposition but certainly correctness of reference under Section 10 of Industrial Disputes Act is not in challenge before this Court. Reliance has been made on another judgment of Hon'ble Apex Court reported in **(2000) 1 SCC 371**, **National Engg. Industries Ltd. v. State of Rajasthan** in judgment of **2016** (supra). In **Sapan Kumar Pandit's (2000)**, case it was held that the period of making of reference is co- extensive with the existence of dispute, meaning thereby that the dispute should be alive on the day when the decision was taken to make a reference or to refuse to make reference. Although, Hon'ble Apex Court has made elaborated discussions qua consideration before making reference which is not issue before this Court. The judgment referred in **2016** primarily reveals guidelines how reference under Section 10 of Industrial Disputes Act is to be made by competent authority under the Industrial Disputes Act. In the judgment, there is no stipulation of violation of any other provisions of Industrial Disputes Act in which had been denied either for relief of reinstatement or compensation. As such, this judgment of **(2016)** does not apply to the present case which deals primarily with reference under Section 10 of Industrial Disputes Act and not for wrongful termination under Section 25 of Industrial Disputes Act. Moreover, the facts of case before the Hon'ble Apex Court are altogether different from case in hand as in case before Hon'ble Apex Court petitioner was educated person working as clerk whereas the claimant before this Court is uneducated unskilled labourer besides being an illiterate villager who had been engaged as labourer to manual work by respondents. On

this score also facts of case are different. Not only this, law of limitation is held to be not applicable in view of observation made in para (18) of judgment **(2016)** supra. Accordingly, it is held that judgment of 2016 does not apply to the present case having different facts as well as law.

20. Applying the ratio of aforesaid judgments more specifically judgment reported in **2013 (136) FLR 893 SC** (supra) and that petitioner had rendered total service for **three years** who was non-skilled worker ageing 41 years when her services were illegally terminated who is not likely to get government job at this age and had factually worked for 900 days in three years when she had already completed 240 days entitling her protection envisaged under Section 25-F of Industrial Disputes Act irrespective of fact that demand notice was issued after a period of fourteen years by the petitioner, but keeping in view peculiar facts and circumstances as stated above a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be appropriate relief to the petitioner in lieu of back wages, seniority, past service benefits as well as other consequential service benefits. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

21. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

22. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the back wages, seniority, past service benefits as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 211/2016

Smt. Leela Devi w/o Sh. Hem Singh, Village Bandhardi, P.O. Pehad, Tehsil Sarkaghat, Distt. Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. . .*Respondent.*

27-07-2017 Present: Sh. N.L. Kaundal, A.R. for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

No PW is present. Heard. Authorised representative for the petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the authorised representative for the petitioner as stated above, the reference no. 211/16 is hereby dismissed as withdrawn.

1. Ordered accordingly. The parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

4. The file, after completion be consigned to the records.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM - INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 602/2015

Date of Institution : 19.12.2015

Date of Decision : 28.7.2017

Shri Satyawar s/o Shri Mahesh Dass, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> Whether the industrial dispute raised by the worker Shri Satyawar, s/o Shri Mahesh Dass, r/o Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 18-08-2010 regarding his alleged illegal termination of services during August, 2004 suffers from delay and latches? If not, Whether termination of services of Shri Satyawar S/O Shri Mahesh Dass, R/O Village Shoon, P.O. Udeen, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, KIllar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during August, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1997 who continuously worked till August, 2004 with the respondent/department. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of August, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of "Last come First go" had not been followed by the department/respondent. The petitioner has named 28 persons who were junior to petitioner and joined service from 1st May, 1998 to 1st September, 2007. In the end of month of August, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time, one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity

of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of August, 2004. He further prayed for reinstatement in service w.e.f. month of August, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between 1997 to August, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2005 having completed 08 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2004, he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C1 to Ex. RW1/C22 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 05.12.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 18.8.2010 qua his termination of service during August, 2004 by respondent suffers from vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of petitioner by the respondent during August, 2004 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 who continuously worked till 2004 with the respondent/department is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief

of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to August, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 154 days in the year 1997, 146.5 days in 1998, 144 days in 1999, 96 days in 2000, 93 days in 2001, 107.5 days in 2002, 116 days in 2003 and 56 days in 2004 and thus a total of his service in 1997 to 2004 in 08 years he had worked for 913 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 56 days and thus

immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1996 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other co- workers. All of these co-workers shown in Ex. PW1/E the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/E also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/C1 to Ex RW1/C22. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/C1 to Ex. RW1/C22 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in August, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied

admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the

Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of

dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing- cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5-Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 913 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years** i.e. demand notice was given on 18.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 41 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case

before this Court, the petitioner is an illiterate unskilled worker. For the abovesaid reasons, plea of delay and laches would not eclipse claim of petitioner.

21. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. **: 08/2016**

Date of Institution **: 02.01.2016**

Date of Decision **: 28.07.2017**

Shri Bargat Raj, s/o Shri Laxmi Chand, r/o Village and Post Office Punto, Tehsil Pangi, District Chamba, H.P. .

.Petitioner.

Versus

The Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Bargat Raj S/O Shri Laxmi Chand, R/O Village and Post Office Punto, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 2.6.2012 regarding his alleged illegal termination of service during September, 2004 suffers from delay and latches? If not, Whether termination of the services of Shri Bargat Raj S/O Shri Laxmi Chand, R/O Village and Post Office Punto, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been appointed on daily wage basis on muster roll in the month of August, 1995 who continuously worked till September, 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally

terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has came to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Jai Dass who appointed in 1998, Tek Chand in 1999, Baldev in 2000, Amar Nath in 2000, Balak Chand in 2000, Shyam Lal in 2000, Prakash Chand in 2001, Sucheta Ram in 2001, Trilok Chand in 2002, Hari in 2003, Hari Ram in 2003, Ram Dei in 2003 and Budhi Ram in 2003. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 02.6.2012 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.4412/2015 which had been decided on 23.11.2015 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in September, 2004 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1995 to 2004. He further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply, inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its

stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of orders/Awards Ex. RW1/C1 to Ex. RW1/C9 and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.10.2016 for determination:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 02.6.2012 qua his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent w.e.f. September, 2004 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.60,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time, no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon"ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart

Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 53 days in the year 1994, 75 days in 1995, 39 days in 1998, 89 days in 1999, 23 days in 2000, 101 days in 2001, 49 days in 2002, 102 days in 2003 and 101 days in 2004 and thus a total of his service in 1994 to 2004 in 09 years he had worked for 632 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 101 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon"ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as

reflected in Ex. RW1/C1 to Ex RW1/C9. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C1 to Ex RW1/C9 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 9 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross- examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the

reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it

cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963-Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar**

Pradesh v. Akhilesh Kumar Khare & another reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 632 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** *i.e.* demand notice was given on 02.6.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely

declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 13/2016

Date of Institution : 04.01.2016

Date of Decision : 28.07.2017

Shri Ajeet Kumar s/o Shri Gian Chand, r/o Village Parghwal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Division Killar, H.P.P.W.D., Tehsil Pangi, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Ajeet Kumar S/O Shri Gian Chand, R/O Village Parghwal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 23.4.2011 regarding his alleged illegal termination of service during October, 2002 suffers from delay and latches? If not, Whether termination of the services of Shri Ajeet Kumar S/O Shri Gian Chand, R/O Village Parghwal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2002 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been appointed on daily wage basis on muster roll in the month of April, 1997 who continuously worked till 2002 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has came to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Janto Devi who appointed in 2001, Jeet Singh in 1997, Gijja Ram in 1999, Laxmi Devi in 1999 and Gian Chand in 1997. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge- sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2002 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 23.4.2011 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.8315/2012 which had been decided on 20.12.2012 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in October, 2002 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1997 to 2002. He further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply, inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2002 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2002 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of orders/Awards Ex. RW1/C1 to Ex. RW1/C9 and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.10.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 23.4.2011 qua his termination of service during October, 2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent *w.e.f.* October, 2002 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 continuously worked till October, 2002 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to October, 2002. He has also stated on oath that no notice under Section 25- F of the Act was given by the respondent before terminating his service and at the same time, no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2002 by

oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2002. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 202 days in the year 1997, 197 days in 1998, 165 days in 1999, 176 days in 2000, 173 days in 2001 and 150 days in 2002 and thus a total of his service in 1997 to 2002 in 06 years he had worked for 1063 days in his entire service period. Be it noticed that petitioner had worked for more than 160 except the year 2002 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2002 the petitioner had merely worked for 150 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise

mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2002 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/C1 to Ex RW1/C9. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C1 to Ex RW1/C9 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have worked for more than 160 days in preceding 6 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in October, 2002, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross- examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing

discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitieonr relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
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> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
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> **14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—
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> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the

legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost

important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon"ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
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> Limitation Act, 1963. Section 5-Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that

has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation. Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in

raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 1063 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2002 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** *i.e.* demand notice was given on 23.4.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not

maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 15/2016

Date of Institution : 20.01.2016

Date of Decision : 28.07.2017

Shri Sher Singh s/o Shri Bazir Chand, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Sher Singh S/O Shri Bazir Chand, R/O Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 6.10.2011 regarding his alleged illegal termination of service during October, 2005 suffers from delay and latches? If not, Whether termination of the services of Shri Sher Singh S/O Shri Bazir Chand, R/O Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during October, 2005 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been appointed on daily wage basis on muster roll in the month of November, 1996 who continuously worked till October, 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has came to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Janto Devi who appointed in 2001, Jeet Singh in 1997, Gijja Ram in 1999, Laxmi Devi in 1999 and Gian Chand in 1997. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges

that he has remained unemployed ever since his illegal termination from year of 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 6.10.2011 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.4410/2015 which had been decided on 24.11.2015 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in October, 2005 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1996 to 2005. He further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply, inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2005 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2005 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R.

Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of orders/Awards Ex. RW1/C1 to Ex. RW1/C9 and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.10.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 6.10.2011 qua his termination of service during October, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent w.e.f. October, 2005 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.65,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1996 continuously worked till October, 2005 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no

written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1996 to October, 2005. He has also stated on oath that no notice under Section 25- F of the Act was given by the respondent before terminating his service and at the same time, no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2005 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2005. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 74 days in the year 1996, 125 days in 2001, 136 days in 2002, 127 ½ days in 2003,

102 days in 2004 and 88 days in 2005 and thus a total of his service in 1996 to 2005 in 06 years he had worked for 652 ½ days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2005 the petitioner had merely worked for 88 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2005 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/C1 to Ex RW1/C9. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/ petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C1 to Ex RW1/C9 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have worked for more than 160 days in preceding 6 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in October, 2005, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having

remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the

Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of

dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2005 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of

Mackinon Machenize's case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 652 ½ days as per mandays chart on record and that the services of petitioner were disengaged in October, 2005 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years** i.e. demand notice was given on 06.10.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** *i.e.* **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate

unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.65,000/- (Rupees sixty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.65,000/- (Rupees sixty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 67/2016

Date of Institution : 20.02.2016

Date of Decision : 28.07.2017

Shri Jagdish Kumar s/o Shri Ram Lal, r/o Village Findru, P.O. Sach, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I.P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Jagdish Kumar S/O Shri Ram Lal, R/O Village Findru, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 23.1.2012 regarding his alleged illegal termination of service during June, 2003 suffers from delay and latches? If not, Whether termination of the services of Shri Jagdish Kumar S/O Shri Ram Lal, R/O Village Findru, P.O. Sach, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during June, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been appointed on daily wage basis on muster roll in the month of May, 1995 who continuously worked till June, 2003 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that after termination of the

services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Jeet Singh who appointed in 1997, Geeta Ram in 1998, Laxmi Devi in 1999, Baldev in 2000, Prakash Chand in 2001, Trilok Chand in 2002, Hari Ram in 2003 and Smt. Rama Dei in 2003. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 23.1.2012 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.4396/2015 which had been decided on 21.11.2015 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in June, 2003 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1995 to 2003. He further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply, inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1995 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2003 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no

necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of orders/Awards Ex. RW1/C1 to Ex. RW1/C9 and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.10.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 23.1.2012 qua his termination of service during June, 2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent during June, 2003 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1995 continuously worked till June, 2003 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1995 to June, 2003. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time, no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in June, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon"ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after June, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not

complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 168 days in the year 1995, 98.5 days in 1996, 20 days in 2002 and 29 days in 2003 and thus a total of his service in 1995 to 2003 in 04 years he had worked for 315 ½ days in his entire service period. Be it noticed that petitioner had worked for more than 160 except the years 1996 and 2002 & 2003 and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 29 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after June, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1995 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/C1 to Ex RW1/C9. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C1 to Ex RW1/C9 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have worked for more than 160 days in preceding 6 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in June, 2003, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross- examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the

Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in

the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing- cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon"ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-

Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years-Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

27. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering

compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 04 years and actually worked for 315 ½ days as per mandays chart on record and that the services of petitioner were disengaged in June, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 23.1.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case

is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUENO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 68/2016

Date of Institution : 20.02.2016

Date of Decision : 28.07.2017

Shri Prem Raj s/o Shri Paras Ram, r/o Village Parghwal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Prem Raj S/O Shri Paras Ram, R/O Village Parghwal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. *vide* demand notice dated 06-06-2011 regarding his alleged illegal termination of services during October, 2002 suffers from delay and latches? If not, Whether termination of services of Shri Prem Raj S/O Shri Paras Ram, R/O Village Parghwal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. during October, 2002, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been appointed on daily wage basis on muster roll in the year 1997 who continuously worked till October, 2002 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner

when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. The grievance of petitioner further revealed that during years 2003 to 2005, respondent/department had disengaged the services of more than 500 daily waged workmen in different Divisions of HPPWD and IPH. It is stated that it has came to the knowledge to the petitioner from reliable sources that respondent/department had engaged more than 200 contractors during 2003 onwards. It is stated that after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Janto Devi who appointed in 2001, Jeet Singh in 1997, Gijja Ram in 1999, Laxmi Devi in 1999 and Gian Chand in 1997. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge- sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2002 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Feeling aggrieved the action of respondent in terminating the services of petitioner an industrial dispute was raised vide demand notice dated 6.6.2011 copy of the same was forwarded to Labour Officer, Chamba for further necessary action. It is alleged that Labour Officer, Chamba could not resolve the dispute and failure report under Section 12(4) of the Industrial Disputes Act and the matter was referred to appropriate government i.e. Labour Commissioner, Shimla who declined to refer the case of petitioner for adjudication in pursuance to which the petitioner had approached the Hon'ble High Court of H.P. by filing CWP no.4413/2015 which had been decided on 24.11.2015 and order of the Labour Commissioner, Shimla has been setting aside. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside illegal termination of petitioner by the respondent/department in October, 2002 as well as period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1997 to 2002. He further prayed for reinstatement in service along-with full back wages, seniority including continuity in service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply, inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2002 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 4 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. It is further stated that name of person Sham Lal and Gautam Singh had been engaged on harness case and as such there was no violation of the principle of the Industrial Disputes Act, 1947. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour

Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2002 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of seniority list Ex. PW1/B, copy of RTI information dated 13.11.2013 Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, copy of orders/Awards Ex. RW1/C1 to Ex. RW1/C9 and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 20.10.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 6.6.2011 qua his termination of service during October, 2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent during October, 2002 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1998 continuously worked till October, 2002 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1998 to October, 2002. He has also stated on oath that no notice under Section 25- F of the Act was given by the respondent before terminating his service and at the same time, no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2002 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued.

RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2002. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 178.5 days in the year 1998, 166 days in 1999, 177 days in 2000, 171 days in 2001 and 150 days in 2002 and thus a total of his service in 1998 to 2002 in 56 years he had worked for 842 ½ days in his entire service period. Be it noticed that petitioner had worked for more than 160 except the year 2002 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2002 the petitioner had merely worked for 150 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have violated the provisions of Section 25-F of the Act.

15. Ld. counsel/Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B is the year-wise seniority/mandays of daily waged workers who were junior to the petitioner and had joined in the year 1999 or thereafter. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. PW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2002 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.4 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon"ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as

reflected in Ex. RW1/C1 to Ex RW1/C9. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ex. RW1/C1 to Ex RW1/C9 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have worked for more than 160 days in preceding 6 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in October, 2002, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross- examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Sections 25-F, 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the

reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it

cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon"ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar**

Pradesh v. Akhilesh Kumar Khare & another reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon"ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon"ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon"ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 05 years and actually worked for 842 ½ days as per mandays chart on record and that the services of petitioner were disengaged in October, 2002 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **nine years** *i.e.* demand notice was given on 6.6.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay

and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013.** Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM - INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 510/2015

Date of Institution : 09.11.2015

Date of Decision : 28.07.2017

Shri Bhag Singh s/o Shri Devou Ram, r/o Village Shagli, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, I.& P.H./H.P.P.W.D., Killar (Pangi) District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Bhag Singh S/O Shri Devou Ram, R/O Village Shagli, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated nil received in the Labour Office Chamba on dated 31-10-2011 regarding his alleged illegal termination of services during August, 2004 suffers from delay and latches? If not, Whether termination of services of Shri Bhag Singh S/O Shri Devou Ram, R/O Village Shagli, P.O. Kothi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during August, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back

wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1995 who continuously worked till 2005 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2005. He further prayed for reinstatement in service w.e.f. year 2005 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1991 to 2005 be counted 160 days continuous service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required

for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of order of Hon'ble High Court Ex. PW1/C, copy of seniority list Ex. PW1/D1 and D2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, Ex. RW1/D1 to Ex. RW1/D4 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.04.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during August, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent w.e.f. August, 2004 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.85,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1996 continuously worked till August, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1996 to August, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP

where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 138 days in the year 1996, 101 days in 1997, 68 days in 1998, 111 days in 1999, 162 days in 2000, 57 days in 2001, 88 days in 2002, 124 days in 2003 and 77 days in 2004 and thus a total of his service in 1996 to 2004 in 09 years he had worked for 926 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 77 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld.

counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in August, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross- examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitieonr relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court

titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely

erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even

longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing- cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation of section 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon"ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining

of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon"ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this

court factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 926 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 31.10.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon"ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.85,000/- (Rupees eighty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.85,000/- (Rupees eighty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per

annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this28th day of July, 2017.

(K. K. Sharma),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 493/2015

Date of Institution : 09.11.2015

Date of Decision : 28.07.2017

Shri Dev Raj s/o Shri Hukam Chand, r/o Village Bishthow, P.O. Luj, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Devi Raj S/O Shri Hukam Chand, R/O Village Bishthow, P.O. Luj, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated 19-12-2011 regarding his alleged illegal termination of services during September, 2004 suffers from delay and latches? If not, Whether termination of services of Shri Devi Raj S/O Shri Hukam Chand, R/O Village Bishthow,

P.O. Luj, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during September, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from theaboveemployer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1997 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/ department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. He further prayed for reinstatement in service w.e.f. year 2004 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1997 to 2004 be counted 160 days continuous service and regularization of the services of petitioner w.e.f. 01.01.2004 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather

clarified by stating that petitioner was engaged as daily waged beldar in 1998 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of order of Hon"ble High Court Ex. PW1/C, copy of seniority list Ex. PW1/C1 and C2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, Ex. RW1/D1 to Ex. RW1/D4 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.04.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 19.12.2011 qua his termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent w.e.f. September, 2004 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.90,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1998 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1998 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never

called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 168 days in the year 1998, 130 days in 1999, 147 days in 2000, 112 days in 2001, 148 days in 2002, 127 days in 2003 and 104 days in 2004 and thus a total of his service in 1998 to 2004 in 07 years he had worked for 936 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 104 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to

petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1998 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/ petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **"term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it

may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> **14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had

assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing-Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon"ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon"ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D. Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court-Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement**

should be followed to be substituted by award of compensation. Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon"ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court

in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 07 years and actually worked for 936 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 19.12.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon"ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon"ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.90,000/- (Rupees ninety thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not

maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.90,000/- (Rupees ninety thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 495/2015

Date of Institution : 09.11.2015

Date of Decision : 28.07.2017

Shri Chaman Singh s/o Shri Sher Chand, r/o Village Ghangeet, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Chaman Singh S/O Shri Sher Chand, R/O Village Ghangeet, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated 21- 12-2011 regarding his alleged illegal termination of services during September, 2005 suffers from delay and latches? If not, Whether termination of services of Shri Chaman Singh S/O Shri Sher Chand, R/O Village Ghangeet, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during September, 2005, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from theaboveemployer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1999 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Chunku Ram who appointed in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of

statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. He further prayed for reinstatement in service w.e.f. year 2004 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1999 to 2004 be counted 160 days continuous service and regularization of the services of petitioner w.e.f. 01.01.2006 under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1999 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of order of Hon'ble High Court Ex. PW1/C, copy of seniority list Ex. PW1/D1 and D2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, Ex. RW1/D1 to Ex. RW1/D4 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.04.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 21.12.2011 qua his termination of service during September, 2005 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent w.e.f. September, 2005 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1999 continuously worked till September, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1999 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 139 ½ days in the year 1999, 130 days in 2000, 139 days in 2001, 152 days in 2002, 141 days in 2003 and 95 days in 2004 and thus a total of his service in 1999 to 2004 in 06 years he had worked for 796 ½ days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 95 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required

from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1999 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon"ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/ petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in September, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from**

employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> **14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing- cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no

closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 796 ½ days as per mandays chart on record and that the services of petitioner were disengaged in September, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years** i.e. demand notice was given on 21.12.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of

compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 497/2015

Date of Institution : 09.11.2015

Date of Decision : 28.07.2017

Ms. Devki d/o Shri Ram Dyal, r/o Village Hugal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Ms. Devki D/O Shri Ram Dyal, R/O Village Hugal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated 18-01-2012 regarding her alleged illegal termination of services during August, 1999 suffers from delay and latches? If not, Whether termination of services of Ms. Devki D/O Shri Ram Dyal, R/O Village Hugal, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during August, 1999, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1992 who continuously worked till 1999 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act' for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/ department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence

or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 1999 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 1999. she further prayed for reinstatement in service w.e.f. year 1999 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1992 to 1999 be counted 160 days continuous service and regularization of the services of petitioner w.e.f. 1.1.2001 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 1999 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of „Last
come First go" was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order of Hon'ble High Court, copy of seniority list Ex. PW1/D1 and D2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as

RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, Ex. RW1/D1 to Ex. RW1/D4 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.04.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 18.1.2012 qua her termination of service during August, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent w.e.f. August, 1999 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.65,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1992 continuously worked till August, 1999 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to

petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1992 to August, 1999. she has also stated on oath that no notice under Section 25- F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in August, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 198 ½ days in the year 1994, 164 days in 1995, 164 days in 1996, 292 days in 1997, 116 days in 1998 and 61 ½ days in 1999 and thus a total of her service in 1992 to 1999 in 06 years she had worked for 906 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to

alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 61 ½ days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/ petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in August, 1999, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the

judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had

rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation of section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service-**Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/ petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of

Mackinon Machenize's case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 906 days as per mandays chart on record and that the services of petitioner were disengaged in August, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** i.e. demand notice was given on 18.1.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case

before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.65,000/- (Rupees sixty five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.65,000/- (Rupees sixty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM - INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 488/2015

Date of Institution : 09.11.2015

Date of Decision : 28.07.2017

Ms. Shakuntla d/o Shri Panchi Lal, r/o Village Dhanwas, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial raised by the worker Ms. Shakuntla D/O Shri Panchi Lal, R/O Village Dhanwas, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated nil received in Labour Office Chamba on dated 31-10-2011 regarding her alleged illegal termination of services during October, 2000 suffers from delay and latches? If not, Whether termination of services of Ms. Shakuntla D/O Shri Panchi Lal, R/O Village Dhanwas, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during October, 2000, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1990 who continuously worked till 2000 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is

very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2000 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2000. She further prayed for reinstatement in service w.e.f. year 2000 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1990 to 2000 be counted 160 days continuous service and regularization of the services of petitioner w.e.f. 1.1.1999 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 2000 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2000 she would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of order of Hon'ble High Court, copy of seniority list Ex. PW1/D1 and D2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, Ex. RW1/D1 to Ex. RW1/D4 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.04.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 31.10.2011 qua her termination of service during October, 2000 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent during October, 2000 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1992 continuously worked till October, 2000 with the

respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1992 to October, 2000. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2000 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 28 days in the year 1992, 186 days in 1994, 160 ½ days in 1995, 191 ½ days in 1996, 199 days in 1997, 165 days in 1998, 124 days in 1999 and 138 days in 2000 and thus a total of her service in 1992 to 1999 in 08 years she had worked for 1191 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2000 the petitioner had merely worked for 138 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2000 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in October, 2000, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> **13. In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The

appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days

during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to

consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon"ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 08 years and actually worked for 1191 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2000 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **ten years** i.e. demand notice was given on 31.10.2011. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in

which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.80,000/- (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 512/2015

Date of Institution : 09.11.2015

Date of Decision : 28.07.2017

Smt. Laxmi Dei w/o Shri Ram Chand, r/o V.P.O. Punto, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi) District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Smt. Laxmi Dei W/O Shri Ram Chand, R/O V.P.O. PUnto, Thesil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated 03-02-2012 regarding her alleged illegal termination of services during October, 2002 suffers from delay and latches? If not, Whether termination of services of Smt. Laxmi Dei W/O Shri Ram Chand, R/O V.P.O. PUnto, Thesil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during October, 2002, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that she had been initially engaged as daily wage beldar on muster roll basis in the year 1992 who continuously worked till 2002 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of

intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that she has remained unemployed ever since her illegal termination from year of 2002 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2002. she further prayed for reinstatement in service w.e.f. year 2002 along-with back wages, seniority including continuity in service as petitioner as she had remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1992 to 2002 be counted 160 days continuous service and regularization of the services of petitioner w.e.f. 2000 under 8 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 2002 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2002 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent,

question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of order of Hon'ble High Court, copy of seniority list Ex. PW1/C1 and C2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, Ex. RW1/D1 to Ex. RW1/D4 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.04.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 3.2.2012 qua her termination of service during October, 2002 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent w.e.f. October, 2002 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.80,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1992 continuously worked till October, 2002 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1992 to October, 2002. she has also stated on oath that no notice under Section 25- F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2002 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/ department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued.

RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2002. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 14 days in the year 1992, 142 days in 1994, 77 days in 1995, 56 days in 1996, 51 days in 1998, 127 days in 1999, 102 days in 2000, 102 days in 2001 and 111 days in 2002 and thus a total of her service in 1992 to 2002 in 09 years she had worked for 782 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2002 the petitioner had merely worked for 104 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2002 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as

reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/ petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in October, 2002, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counsel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross- examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon"ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same"**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon"ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> " 12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd

issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it

cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing- cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon"ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to her credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when she has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar**

Pradesh v. Akhilesh Kumar Khare & another reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 09 years and actually worked for 782 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2002 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **9 ½ years** i.e. demand notice was given on 3.2.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner

could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.80,000/- (Rupees eighty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.80,000/- (Rupees eighty thousand only) to the petitioner in lieu of the reinstatement back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 491/2015

Date of Institution : 09.11.2015

Date of Decision : 28.07.2017

Shri Rajinder Singh s/o Shri Suni Ram, r/o Village Gosti, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Rajinder S/O Shri Suni Ram, R/O Village Gosti, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. vide demand notice dated nil received in the Labour Office Chamba on 29-5-2012 regarding his alleged illegal termination of services during October, 1999 suffers from delay and latches? If not, Whether termination of services of Shri Rajinder S/O Shri Suni Ram, R/O Village Gosti, P.O. Karyas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. during October, 1999, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1992 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. He further prayed for reinstatement in service w.e.f. year 2004 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1992 to 2004 be counted 160 days continuous service and regularization of the services of petitioner w.e.f. 01.01.2001 under 10 years regularization policy and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner

mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 1999 he would have definitely raised industrial dispute immediately and that after thirteen years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of order of Hon'ble High Court Ex. PW1/C, copy of seniority list Ex. PW1/D1 and D2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, Ex. RW1/D1 to Ex. RW1/D4 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.4.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during October, 1999 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent w.e.f. October, 1999 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 165 days in the year 1994, 153 days in 1995, 166 days in 1996, 146 days in 1997, 128 days in 1998 and 121 days in 1999 and thus a total of his service in 1994 to 1999 in 06 years he had worked for 879 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 121 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/ petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in October, 1999, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that „**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitieonr relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the

fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh *v.* The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon"ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon"ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F-Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow**

University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 06 years and actually worked for 879 days as per mandays chart on record and that the services of petitioner were disengaged in October, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **twelve years** i.e. demand notice was given on 29.5.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner

could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (Rupees seventy five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-*Industrial Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 500/2015

Date of Institution : 09.11.2015

Date of Decision : 28.07.2017

Shri Dev Raj s/o Shri Ram Lal, r/o Village Thamoh, P.O. Killar, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Dev Raj S/O Shri Ram Lal, R/O Village Thamoh, P.O. Killar, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. vide demand notice dated nil received in the Labour Office Chamba on dated 11.6.2012 regarding his alleged illegal termination of services during October, 2004 suffers from delay and latches? If not, Whether termination of services of Shri Dev Raj S/O Shri Ram Lal, R/O Village Thamoh, P.O. Killar, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi) District Chamba, H.P. during October, 2004, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as enumerated in the present claim petition by the petitioner above named revealed that he had been initially engaged as daily wage beldar on muster roll basis in the year 1994 who continuously worked till 2004 with the respondent. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as per the criteria prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity). Averments made in the petition revealed that the services of petitioner had been interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as "continuous services" for the purposes of calculation of 160 days for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service orally without issuing one month's notice in writing stipulating therein reason for retrenchment besides no retrenchment compensation was paid to petitioner when respondent had been illegally terminated. It is also alleged that respondent had not followed the provisions of Section 25-F of the Act while disengaging petitioner from service. It is stated that petitioner is very poor who has no source of income besides after termination of the services of petitioner, petitioner had approached the respondent time and again but of no avail. The grievance of petitioner further remains that when the services of petitioner had been terminated, respondent/ department had reengaged number of new workman from time to time and while doing so, respondent had not followed the principle of "Last come, First go" envisaged under Section 25-G of the Act. It is further alleged that respondent/department had continuously retained junior to petitioner who are still in service namely Suraj Ram who appointed in 1997, Chunku Ram in 2000, Budhi Ram in 2003 and Dev Raj in 2007. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from year of 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and thus petitioner prays for setting aside oral order of termination/retrenchment of respondent in the year 2004. He further prayed for reinstatement in service w.e.f. year 2004 along-with back wages, seniority including continuity in service as petitioner as he had remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks deliberately given time and again during entire service of petitioner between 1997 to 2004 be counted 160 days continuous service and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. The allegations of fictional breaks given by respondent to the petitioner have been specifically denied. In so far as engagement of persons junior to petitioner mentioned in para no. 10 of the claim petition were appointed as per order of Labour Court and no other juniors to the petitioner had been retained in service by the respondent. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required.

Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.10 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala and respondent had not violated the principle of "Last come, First go". It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of "Last come First go" was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of demand notice Ex. PW1/B, copy of order of Hon'ble High Court Ex. PW1/C, copy of seniority list Ex. PW1/D1 and D2 and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri D.R. Chauhan, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, Ex. RW1/C copy of mandays chart of co-workers, Ex. RW1/D1 to Ex. RW1/D4 copy of orders/awards and closed the evidence.

7. I have heard the ld. counsel of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 29.04.2016 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated nil qua his termination of service during October, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . .*OPP.*

2. Whether termination of the services of the petitioner by the respondent w.e.f. October, 2004 is/was illegal and unjustified as alleged? . .*OPP.*

3. If issue no. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation of Rs.60,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1994 continuously worked till October, 2004 with the respondent is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1994 to October, 2004. He has also stated on oath that no notice under Section 25- F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2012 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart

Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermit breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 108 days in the year 1994, 129 days in 2003 and 109 days in 2004 and thus a total of his service in 1994 to 2004 in 03 years he had worked for 346 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 109 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. counsel for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of "Last come First go" was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. RW1/C is the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 1997 or thereafter. All of these co-workers shown in Ex. RW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.10 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. counsel for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of

orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D4. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. RW1/D1 to Ex. RW1/D4 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. counsel for petitioner has contended that after petitioner's termination in October, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. counel of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that "**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitieonr relief claimed for by him. On the other hand, ld. counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case

particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

24. Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka[4] it was held by this Court as follows—

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against his and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. Dy. D.A. representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. counsel for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant- employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

21. Repudiating the arguments by ld. Dy. D.A. for the State, ld. counsel for claimant/petitioner has relied upon the judgment of Hon'ble Apex Court in case titled as **Tapash Kumar Paul vs. BSNL & another** reported in **AIR 2015 SC 357** wherein Hon'ble Court held that a Court may pass an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds. In this judgment, it was held that compensation can be granted in a situation where the industry is closed **or** that employees has superannuated or going to retire shortly and no period is left to his credit **or** where workman has been rendered in capacitated to discharge duties cannot be reinstated and/or fourthly when he has lost confidence of the management to discharge duties. It was observed that there may be appropriate cases on facts which may justify substituting an order of reinstatement by award of compensation but that **has to be supported by some legal and justifiable reasons indicating why the reinstatement should be followed to be substituted by award of compensation.** Ld. counsel for the petitioner with the aid of above-said judgment had argued that there are only **four situations** when a worker may be awarded compensation instead of reinstatement but the judgment has certainly not been correctly appreciated by ld. counsel as this judgment postulates probable four situations which are illustrate in nature where compensation may be awarded instead of reinstatement but that does not mean that except the four grounds, no other ground would be appropriate for awarding compensation. In the case in hand before this court, it has come that petitioner had abandoned the job who did not report for duty for several years and later gave notice requesting for joining of duties but the conditions in para no.5 of judgment (2015 supra) even if not met requirement, cannot be a ground to reinstate the petitioner and it is only compensation which would be appropriate relief. Ld. counsel for the petitioner has relied upon the judgment of Hon'be Apex Court titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.** reported in **AIR 2014 SC (Supp) 121**, **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014(3) Apex Court Judgments 652.** I have gone through these judgments and of view that they don't come to rescue the petitioner on point of reinstatement instead of compensation. Ld. Dy. D.A. for State on the other hand has relied upon the judgment of Hon'ble Apex Court in **Vice Chancellor, Lucknow University, Lucknow, Uttar**

Pradesh v. Akhilesh Kumar Khare & another reported in **AIR 2015 SC 3473**. It has been contended that engagement of claimant/petitioner in this case was not through regular mode of recruitment and applying the ratio of this judgment **AIR 2015 SC supra**, claim of petitioner for reinstatement can be negated and thus compensation would be sufficient for redressal of grievance of the claimant/petitioner. Similarly, in **2016 (1) Him. L.R. 502** titled as **State of Himachal Pradesh and another vs. Chaman Singh** relied by ld. AR for petitioner interpretation of Section 137 of Limitation Act was involved which provides that Article 137 of Limitation Act did not apply to industrial disputes. **In 2014 (3) Apex Court Judgment 652 (SC)** similar view was reiterated which clearly mandates that claimant/petitioner cannot be denied relief sought for merely on the ground of delay and laches. That being so, the law remains as it was that ground of delay and laches, claimant/petitioner cannot be denied relief rather the court has to consider various aspects before moulding relief and the case in hand it would not be erroneous to mention here that the claimant/petitioner can be reasonably indemnified by ordering compensation and not by reinstatement. In so far as judgment of **AIR 2015 SC 1373** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union** is concerned, the Hon'ble Apex Court has held on closure of unit of company principle of "Last come First go" was not followed which violated Section 25-G of Industrial Disputes Act and retrenchment was held illegal entitling petitioner for retrenchment compensation. Since the facts of case of **Mackinon Machenize's** case are different from case in hand as in former closure of unit of company was involved whereas in case in hand before this court, there is no closure of company rather it is the department of HPPWD which had engaged petitioner without following of the procedure although subject to funds and availability of work but in the case in hand petitioner had abandoned the job who never reported for duty. As such, when there is no closure of any unit by respondent which the petitioner was engaged, judgment of **Mackinon Machenize** cannot be made applicable.

22. After hearing the rival contentions of the parties and case law relied by them, it can be safely concluded that delay in raising industrial dispute is certainly important aspect/circumstance which court has to keep in mind while exercising discretion. In para nos. 20 and 21 of the judgment as referred to in this case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** provides that before exercising its judicial discretion, the Labour Court or Tribunal has to keep in mind all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and delay in raising industrial dispute before grant of relief. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas her services have been terminated in 1986 and she raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 03 years and actually worked for 346 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 11.6.2012. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court referred to above, petitioner would not be entitled either for reinstatement or for back wages but a lump-sum compensation would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. counsel for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on

the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. I have gone through these judgments which are not attracted in this present case as this court not declining relief to the petitioner on the ground of limitation rather on the basis of guidelines of Hon'ble Apex Court laid down in judgment of **2013** as referred to above. Ld. Dy. D.A. representing State/respondents has relied upon the judgment of Hon'ble Apex Court reported in **AIR 2016 SC 2984** titled as **Prabhakar v. Joint Director Sericulture Department and another.** I have gone through the judgment which deals reference under Section 10 of the Industrial Disputes Act in which it has been held that Hon'ble High Court can intervene in writ jurisdiction under Article 226 when reference has been challenged on the ground of inordinate unexplained delay. Since the reference made by the Government in this case is not in challenge before this Court, the above said judgment would not be attracted in the facts and circumstances of the case. Moreso in view of observation qua facts made in judgment **(2016)** supra, claimant/petitioner was found to be an educated person who was working as Clerk whereas in case before this Court, the petitioner is an illiterate unskilled worker. For the above-said reasons, plea of delay and laches would not eclipse claim of petitioner.

23. In view of foregoing discussion, a lump-sum compensation of Rs.60,000/- (Rupees sixty thousand only) would be an appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within four months and from the date of receipt of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award till its realization. Issues no. 1 to 3 are answered accordingly.

ISSUE NO.4

24. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

25. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded will be paid by the respondent to the petitioner within four months and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2017.

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-*Industrial Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 128/2016

Smt. Guddi W/O Sh. Budhi Ram, r/o Village and P.O. Minhal, Tehsil Pangi, District Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, I.&P.H./HPPWD, Division Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent.*

31-07-2017 Present: Sh. I.S. Jaryal, A.R. for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case if fixed for proper orders today. Heard. Authorised representative for the petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the authorised representative for the petitioner as stated above, the reference no. 128/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.

5. The file, after completion be consigned to the records.

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala, H.P.

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है